THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.9745 of 2000

Date: 05.01.2006

Between:

D. Rajeshwar and another.

... Petitioners.

1. Srisaraswathi Grameena Bank, rep., by its Chairman, Adilabad and two others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.9745 of 2000

O R D E R:

Seeking to have the action of the respondents, in not fixing

the seniority of the petitioners with effect from 16-02-1991 as Officers in JMS-I grade, declared as illegal and arbitrary, for a direction to the respondents to prepare the final seniority list of Officers in JMS-I grade, duly treating 16-02-1991 as their date of appointment as Officers in JMS-I grade, and to grant all other consequential benefits, the present writ petition is filed.

The first petitioner was appointed as a clerk-cum-cashier in the first respondent-bank on 14-06-1985 and the second petitioner on 10-06-1985. The Banking Service Recruitment Board, Southern Region, Hyderabad, issued notification dated 19-02-1990 inviting applications for recruitment to various posts including that of Officers (Branch Managers) in various Grameena Banks. Both the petitioners applied for the posts of Branch Managers in Grameena Banks, and, on being found successful, were appointed as Officers (Branch Managers), vide proceedings dated 16-02-1991, and advised to report before the first respondent-bank on or before 01-03-1991. Petitioners were informed that, in case, they did not report for duty by 01-03-1991, they would lose their seniority as per the merit list communicated by the Banking Service Recruitment Board, Southern Region, Hyderabad. Petitioners would contend that, as there was shortage of clerks-cum-cashiers in the first respondent-bank, they were not relieved immediately. While the first petitioner was relieved on 22-02-1991 and had reported for duty the next day on 23-02-1991, the second petitioner was relieved on 28-02-1991 and he reported on
01-03-1991, well within the time limit prescribed in the order of appointment dated 16-02-1991.

Claiming parity in pay scales and other service conditions with employees of Commercial Banks, the Employees Association of Regional Rural Banks approached the Supreme Court. On the suggestion of the Supreme Court, the Government of India constituted a National Industrial Tribunal and referred the dispute for its adjudication. The National Industrial Tribunal passed its award on
30-04-1990 holding that employees of Regional Rural Banks were entitled for parity, in pay scales, allowances and other benefits with employees at a comparable level in corresponding posts in the sponsor banks, from
01-09-1987.

The award of the National Tribunal was accepted by the Government of India and thereafter an Equation Committee was appointed to recommend various issues including the issue of amalgamation of various cadres and fixation of seniority. The Equation Committee recommended amalgamation of various cadres such as Junior clerk-cum-cashiers and Senior clerk-cum-cashiers into the cadre of Senior Clerk-cum-cashier and similarly, the cadre of Field Supervisors and Branch Managers into the cadre of Officers in JMS-I grade. While fixing the *interse* seniority of Officers in JMS-I grade, the Equation Committee recommended that Branch Managers should be ranked above Field Supervisors. The Government, in its circular dated 22-02-1991, accepted the recommendations of the Equation Committee. NABARD, in its proceedings dated 20-03-1993, stipulated that the Branch Managers/Officers, as on 22-02-1991, should rank above field

supervisors in the combined seniority list which would be prepared after amalgamating both the cadres i.e. Branch Managers and Field Supervisors into the restructured cadre of Officers in JMS-I grade.

The relevance of 22-02-1991, as the cut-off date, assumes significance in this writ petition. If the date of appointment of the petitioners as Branch Managers i.e.
16-02-1991 is taken as the date from which their seniority in the cadre of branch managers is to be reckoned, then their appointment being prior to the cut-off date i.e. 22-02-1991, they would be entitled to be placed above the erstwhile Field Supervisors in the amalgamated seniority list of Officers in
JMS-I grade. If, on the other hand, the date of their joining duty in the post of branch managers is to be taken as the date from which their seniority in the cadre of branch managers is to be reckoned, as the petitioners had joined duty on 23-02-1991 and 01-03-1991 respectively, which is after the cut-off date i.e. 22-02-1991, they would be required to be placed below the erstwhile Field Supervisors in the combined seniority list of Officers in JMS-I grade.

The entire dispute revolves around the date from which the petitioners are required to be considered as Officers in JMS-I grade. Before examining this question, a few additional facts are required to be taken note of. The provisional seniority list of Officers in JMS-I grade in the respondent bank was prepared, vide circular dated 04-07-1994, and communicated to the employees concerned. In the said provisional seniority list, the first petitioner

was shown at Sl.No.137 and the second petitioner at Sl.No.138. This provisional seniority list was prepared after amalgamation of the erstwhile cadres of Branch Managers and Field Supervisors. The seniority of the petitioners was fixed on the basis of their dates of joining in the post of Branch Managers on 22-02-1991 and 01-03-1991 respectively and not their date of appointment i.e. 16-02-1991. The petitioners submitted their objections on 16-09-1994 and reiterated their objections later on 16-07-1997 and again on 13-10-1998. The fact that the petitioners had submitted their objections to the provisional seniority list is not in dispute. It is also not in dispute that it is this seniority list prepared, vide circular dated 04-07-1994, which was acted upon in effecting promotions to the post of MMGS-II in the year 2000.

The respondent bank issued circular dated 24-04-2000 informing that a written test would be conducted on 11-06-2000 to effect promotions to 14 posts of Officers in MMGS-II cadre from among those who were working as Officers in JMS-I cadre. The number of candidates to be considered for promotion was restricted to four times the number of vacancies available for promotion and as 14 vacancies in MMGS-II cadre were available, 56 candidates in JMS-I cadre, according to their seniority, were called for to participate in the selection process. On the ground that they were at Sl.Nos.137 and 138, in the provisional seniority list, the petitioners were not called upon to participate in the selection process. Aggrieved thereby, the petitioners approached this Court.

This Court, by order in WPMP.No.12431 of 2000 dated 09-

06-2000, directed that any promotions made to the posts of Officers, MMGS-II grade, would be subject to the result of the writ petition. This Court further directed the respondent-bank to intimate all the appointed candidates about the pendency of the writ petition. After effecting promotions, and on filling up 14 posts of Officers in MMGS-II cadre, the respondent-bank intimated all the appointed candidates of the pendency of the writ petition and that their promotions were subject to the result of the writ petition. However, none of the selected candidates have chosen to approach this Court and implead themselves in the present writ petition.

Sri B.V.S. SivaRam Prasad, learned counsel for the petitioners, would refer to the order of appointment dated 16-02-1991, more particularly, to clause 4 thereof whereby the petitioners were advised to present themselves on or before 01-03-1991 failing which it would be deemed that they were not interested in the offer of appointment and that, in case they did not report by 01-03-1991 but reported subsequently, they would lose their seniority as per the merit list communicated to the respondent-bank by the Banking Service Recruitment Board. Learned counsel would submit that, since both the petitioners reported for duty on or before 01-03-1991, they were entitled for protection of their seniority as per the merit list communicated to the respondent-bank by the Banking Service Recruitment Board. Learned counsel would submit that the fortuitous circumstance of an employee not being able to join the post immediately after intimation, cannot result in

his being denied his seniority. Learned counsel would submit that, since the petitioners were working as clerks-cum-cashiers in the first respondent-bank itself, the first respondent could not take advantage of its own lapse, in not relieving them immediately after the date of appointment i.e. on 16-02-1991, to contend that they should be given their seniority not from the date of the order of appointment i.e. 16-02-1991, but only from the date on which they joined duty. Learned counsel would submit that the date of the order of appointment i.e. 16-02-1991 should be the date from which the petitioners' seniority as Officers in JMS-I grade, should be reckoned and, since this date is prior to the cut-off date i.e. 22-02-1991, the petitioners were entitled to be placed above the erstwhile Field Supervisors in the amalgamated seniority list of Officers in JMS-I grade. Learned counsel would place reliance on **Chairman, Puri Gramya Bank v. Ananda Chandra Das**[1] and to the judgment of the Division Bench of this Court in **G. Koteswara Rao v. Chaitanya Grameena Bank, Guntur District**[2]. Learned counsel would submit that, since the relief sought for in this writ petition is against the respondent-bank, and the question which arises for consideration is the date on which the petitioners are deemed to be Officers in JMS-I cadre, it is unnecessary that all the direct recruits be impleaded as respondents. Learned counsel would place reliance on **A. Janardhana v. Union of India**[3] and **Post Graduate Institute of Medical Education and Research v. A.P. Wasan**[4] in this regard. Learned counsel would submit that, in any event, this Court had ordered that any promotions made

shall be subject to the result of the writ petition and had directed the respondent-bank to intimate all the selected candidates of the pendency of the writ petition. According to the learned counsel, the respondent-bank, in the order appointing the 14 selected candidates as officers in MMGS-II cadre, had specifically incorporated a clause therein that their appointment was subject to the result of this writ petition and, since none of the selected candidates had chosen to approach this Court to be impleaded as respondents, it was not necessary that these candidates be heard before the cause in the writ petition was adjudicated. Learned counsel would also place reliance on the Sri Saraswathi Grameena Bank (Staff) Service Regulations, 1983, more particularly to regulation 13(1) (a) thereof, which provides that the seniority of an officer or employee of the bank in that grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale. Learned counsel would submit that, in accordance with regulation 13(1)(a), the date of petitioners' appointment, as Officers in JMS-I cadre on 16-02-1991, is required to be treated as the date of appointment and not their date of joining on 23-02-1991 and 01-03-1991 respectively. Learned counsel would further submit that clause (1)(d) of the appointment order dated 16-02-1991, which provides that the appointment shall take effect from the date of joining at the branch to which they are posted after completion of the required formalities, cannot be construed as the date of appointment. Learned counsel would submit that since this clause, in the order of appointment, runs contrary to the statutory regulations, it is the statutory regulations which would prevail over

this clause in the order of appointment. Learned counsel would contend that, as the order of appointment must be construed harmoniously with the statutory regulations, and since the petitioners were given time till 01-03-1991 to join duty before which date they had, in fact, joined, their seniority ought to be reckoned from the date of appointment i.e. 16-02-1991 and not the actual date of their joining duty, more particularly, when their failure to join duty earlier was not on their own volition but as the respondent-bank had not relieved them from their erstwhile posts of clerk-cum-cashiers. Learned counsel would contend that, as the respondents had not taken any objection in their counter affidavit with regards the selected candidates not being arrayed as respondents in the writ petition, and since no plea of laches had also been raised, it was not open for them to raise such a contention during the hearing of the writ petition and that such contentions did not necessitate examination in these writ proceedings in the absence of necessary pleadings in this regard. Learned counsel would submit that, while the provisional seniority list was prepared in the year 1994 to which the petitioners had submitted their objections, the seniority list has not been finalised till date and, on the basis of the very same provisional seniority list, selections were effected in the year 2000. Learned counsel would submit that, after the provisional seniority list was prepared in the year 1994, the first selections which took place to the post of Officers in MMGS-II cadre was only in the year 2000 and that the selected candidates were appointed on 09-10-2000. Learned counsel would submit that, since the provisional seniority list had

not been finalized, the objections raised by the petitioners were pending consideration and it was for the first time after the provisional seniority list was prepared in the year 1994, that selections to Officers, MMGS-II grade took place in the year 2000, the petitioners cannot be held guilty of laches as there was no occasion for them to have approached this Court earlier. Learned counsel would also refer to the order of her appointment dated 11-06-1985 issued to one Smt Lakshmi, who was placed at Sl.No.35 in the seniority list of Officers in JMS-I grade. Clause (1) (d) thereof is in *pari materia* with clause (1) (d) of the order of appointment of the petitioners' dated 16-02-1991. While the order of her appointment is dated 11-06-1985 and Smt. Lakshmi accepted the offer of appointment on 13-06-1985, her seniority was however reckoned from the date of appointment on 11-06-1985 and not from 13-06-1985.

Sri K.Gopala krishna Murthy, learned standing counsel for the first respondent-bank, on the other hand, would submit that clause (1)(d) of the order of appointment dated
16-02-1991 is specific in that the appointment is to take effect from the date of joining at the Branch to which the petitioners were posted after completion of all the required formalities. According to the learned standing counsel, since the petitioners had accepted this order of appointment, and had joined duty on 23-02-1991 and 01-03-1991 respectively, their seniority is to be reckoned only from the date on which they joined duty and not the date of the order of appointment. He would also refer to the endorsement made by the petitioners in the order of appointment to the effect

that the terms and conditions stated in the letter and enclosures attached thereto had been carefully read and understood by them and that they had accepted the offer of appointment as Officers (Branch Managers/Field Supervisors) of the bank. Learned standing counsel would submit that, having accepted the terms and conditions in the order of appointment, which provides that the date of joining shall be the date from which the appointment takes effect, it was not open for the petitioners to turn around and contend that it was not the joining date but the date of the order of appointment i.e.

16-02-1991 which should be taken as the date from which they are officers in JMS-I cadre. Learned standing counsel would submit that this clause in the order of appointment is in accordance with regulation 7 of the Sri Saraswathi Grameena Bank (Staff) Service Regulations, 1983, which relates to commencement of service and provides that the service of a person appointed in the bank shall commence on the working day on which he reports for duty on a post in accordance with the terms and conditions of the offer of appointment made to him. Learned standing counsel would submit that, since the petitioners had joined duty only on 23-02-1991 and 01-03-1991 respectively, on a conjoined reading of regulation 7 of the Sri Saraswathi Grameena Bank (Staff) Service Regulations and clause (1) (d) of the order of appointment dated 16-02-1991, the petitioners' seniority had rightly been reckoned only from the date of their joining duty i.e. from 23-02-1991 and 01-03-1991 respectively and, as both these dates were subsequent to the cut-off date i.e. 22-02-1991, they were rightly placed below the

erstwhile Field Supervisors. According to the learned standing counsel, since candidates were called for selection to the post of Officers in MMGS-II cadre, in the ratio of 1:4, and since the petitioners were far below in the seniority list, they were rightly not called to participate in the process of selection. Learned standing counsel would submit that, since the petitioners were aware of the candidates who were selected and appointed as Officers in MMGS-II cadre, their failure to array them as respondents in the writ petition was fatal. Learned standing counsel would submit that, unless and until the selections and consequent appointment made to the posts in MMGS-II grade were set aside, the petitioners were not entitled to be considered for selection to the posts of Officers in MMGS-II cadre. He would submit that the appointment of the selected candidates could not be set aside without their being given an opportunity of being heard. He would contend that, while regulation 7 of the Sri Saraswathi Grameena Bank (Staff) Service Regulations relates to commencement of service, regulation 13 relates to seniority and since the petitioners' service commenced on the date of their joining duty, regulation 7 would prevail notwithstanding anything contrary thereto in regulation 13. Learned standing counsel would also contend that, while the provisional seniority list was published in the year 1994, the petitioners had chosen to remain silent and had approached this Court for the first time only six years thereafter in the year 2000. Learned standing counsel would submit that the first petitioner had subsequently been promoted to the post of Officer in MMGS-II grade.

Before examining the rival contentions, it is necessary to note the relevant statutory provisions in the Saraswathi Grameena Bank (Staff) Service Regulations.

Clause 2(d) defines “duty” and reads as under:

(i) service as a probationer;
(ii) period during which an officer or employee is on joining time;
(iii) period spent on casual leave duly authorised by a competent authority;
(iv) period spent on training after appointment.

Chapter II relates to appointment, probation and termination of service and regulation 7 thereunder relates to commencement of service and reads thus:-

"Service of a person appointed in the Bank shall commence on the working day on which he reports for duty on a post in accordance with the terms and conditions of the offer of appointment made to him:

Provided that in the event of his joining in the afternoon of the working day, he shall not be entitled to draw pay and allowances for that day."

Regulation 13 relates to Seniority and reads thus:

(1) (a) Seniority of an officer or employee of the bank in a grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale.

(b) Where there are two or more officers of the same length of service in that grade or scale, their *inter se* seniority shall be reckoned with reference to their seniority in the immediately preceding grade or scale or the previous cadre to which they belong in the Bank's service.

(c) Where there are two or more officers of the same length of service of such grade or scale or such previous cadre their seniority shall be determined with reference to their seniority in the immediately preceding grade or scale or cadre; as the case may be.

Provided that the inter-seniority of the Field Officers or Accountants, vis-a-vis the Branch Managers, who were in the service of the Bank on the date on which the revised pay scales notified by the Ministry of Finance Department of Economic Affairs, Banking Division letter No.2-17-79-RRB, dated 29th April, 1980 are adopted by the Bank, may be so reckoned that all the Field Offices or Accountants rank junior to the then existing Branch Officers.

(2) The inter-se seniority of officers or employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment.

(3) In the case of an officer or employee whose probation has been extended, his seniority shall be reckoned just below all the officers or employees, if any, recruited or promoted in the same batch along with him.

It is also necessary to note the relevant clauses in the order of appointment dated 16-02-1991. Clauses 1(d) and (4) read thus:

1(d) The appointment takes effect from the date of joining at the branch to which you are posted, after completion of all the required formalities.

(4) You are advised to present yourself before us on or before 01-03-1991 at your own expenses, failing which it will be deemed that you are not interested in the offer of appointment. Please note that in case you do not report to us by 01-03-1991 but reported subsequently after 01-03-1991, you will loose your seniority as per the merit list communicated to us by the Banking Service Recruitment Board, Hyderabad.

Before the contentions urged on behalf of the petitioners are dealt with, it is necessary to first examine the objections raised, on behalf of the respondents, to the maintainability of the writ petition. It is contended on behalf of the respondents that the writ petition is liable to be dismissed in limini on the ground of non-joinder of necessary parties and inordinate delay and latches.

The relief sought for in the writ petition is for a declaration that the seniority of the petitioners should be reckoned from the date on which the order of appointment was issued on16.02.1991. Granting the relief sought for would result in the petitioners being placed above the erstwhile Field Supervisors who have not been arrayed as respondents in the writ petition. The question which arises for consideration is whether failure to do so would necessitate dismissal of the writ petition. It must be note that the

entire issue in this writ petition revolves around the interpretation of the respondent Bank's Staff Service Regulation and certain clauses in the order of appointment dated 16.2.1991. If the interpretation sought to be placed thereto, by the petitioners were to be accepted, then their seniority must be reckoned from 16.02.1991 in which event their having been appointed prior to the cut off date of 22.02.1991 would require their being placed above the erstwhile Field Supervisors in the integrated seniority list of officers in JMS-I grade. If, however, the interpretation sought to be placed by the respondents were to be accepted, then their date of joining must be taken to be the date from which their seniority is to be reckoned, in which event the petitioners, having joined duty after 22.02.1991, must be placed below the erstwhile Field Supervisors in the integrated seniority list of officers in JMS Grade I. The petitioners herein do not claim seniority over any particular individual in the back ground of any facts controverted by that person against whom the claim is made. Their grievance is with regards the criteria adopted by the respondent bank in drawing up the seniority list and in fixing their seniority.

In **A. Janardhana**[3] the Supreme Court observed:

"……**It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant**. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By an order made by the High Court, the names of Respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr Chitkara appeared through counsel Shri Murlidhar Rao and had

made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr P.R. Mridul, learned Senior Counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negatived on this short ground. **However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to *G.M., South Central Railway, Secundrabad* v. *A.V.R. Siddhanti*[7]. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that [SCC para 15, p. 341 : SCC (L&S) p. 296] the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground**. The contention of the respondents for this additional reason must also be negatived….." (emphasis supplied)

I n **Wasan**[4], the Institute had three Departments, i.e, Education, Hospital and Engineering Departments. The Engineering Department dealt primarily with the maintenance

works of the institutes which included diverse activities from maintenance of mechanical equipments such as operation tables to collection and distribution of linen. There were distinct sections in the Engineering Department dealing with different kinds of activities, each section having its separate administrative hierarchy. The question which arose for consideration was whether promotions within the Engineering Department were to be made section-wise or cadre-wise. On the question of non-joinder of parties, the Supreme Court observed:

".....The arguments of the appellants appear plausible but do not bear close scrutiny. **It was not necessary for Respondent 1 to have impleaded the interveners nor can the High Courts decision be criticized because they were not made parties. The grievance of Respondent 1 was against the appellant Institute and its alleged policy to promote Technologist Grade II sectionwise. It was for the appellant Institute to have justified its action. The justification would serve to protect the interests of other employees if it were legally sustainable. If it is not legally sustainable it must be negated and not hearing of employees who may be affected as a result of the rejection of the justification, would not vitiate such negation**. See *G.M., S.C. Rly*. v. *A.V.R. Siddhantti*1, *A. Janardhana* v. *Union of India*2 (SCC at p. 626), and *V.P. Shrivastava* v. *State of M.P.*3 (SCC at p. 763). Furthermore, both K.S. Sharma and R.K. Goel whose stand on the promotional policy of the appellant Institute coincides with those of the interveners, were partners and had the opportunity of presenting their case. Besides, the Division Bench had merely reiterated the view taken in 1989 by the learned Single Judge when he granted relief to R.K. Sareen holding that promotions should be made cadrewise and not sectionwise. No protest was made by the interveners at that stage. They were content to allow the appellant Institute to appoint R.K. Sareen on such basis. They cannot now make a grievance that they were not heard before the Division Bench granted Respondent 1 the same relief....."(emphasis supplied)

In the present case also it is the interpretation to be placed on the respondent–bank staff service regulations and certain clauses in the order of appointment and the criteria to be adopted in drawing up the seniority list which is in issue, and as the

petitioners have not claimed seniority over any particular individual, non-joinder of the erstwhile Field Supervisors is of no consequence.

The petitioners had approached this Court, aggrieved by their non-consideration for selection to MMGS II posts in the respondent bank, in the year 2000. This Court passed an interim order that the selections made would be subject to the result of the writ petition. The respondent bank, while selecting and appointing candidates to fill up the 14 vacancies in MMGS II posts, had specifically incorporated a clause therein that their appointment would be subject to the result of the writ petition. The selected candidates were aware of the pendency of this writ petition and that their appointment to MMGS-II posts was subject to its result. They have, however, chosen not to approach this Court seeking to implead themselves as respondents in this writ petition. Since the petitioners do not seek any relief against any specific individual selected and appointed to MMGS II posts, the mere fact that acceding to their request, and granting them the relief sought for in this writ petition, may possibly affect the appointment of some of the selected candidates would not necessitate dismissal of the writ petition itself for non-joinder of necessary parties. The contentions raised in the writ petition, and the relief sought for, does not make erstwhile Field Supervisors, or the candidates selected and appointed to MMGS II posts, necessary parties to the writ petition.

The petitioners, who were shown at serial No. 137 and 138 in the provisional seniority list prepared in 1994, have filed this writ

petition in the year 2000. It cannot, however, be said that, in the facts and circumstances of the present case, the writ petition is liable to be dismissed on the ground of latches. It is not in dispute that the seniority list prepared in the year 1994 was a provisional seniority list, that objections were invited thereto, that the petitioners had submitted their objections to the manner in which the seniority list was prepared and the criteria adopted for determining seniority, and that no final seniority list has been published till date. The fact that selections, to fill up vacancies in MMGS II posts were held in the year 2000, for the first time after the provisional seniority was prepared in the year 1994, is also not in dispute. Since the petitioners had submitted their objections to the provisional seniority list, the matter was still pending consideration of the respondent bank and the seniority list had not been finalized, there was neither an occasion nor any need for the petitioners herein to challenge the validity of the provisional seniority list earlier. It is only when the 1994 provisional seniority list was acted upon and, based on the seniority as shown therein, that candidates were called for selection to MMGS II posts in the ratio of 4:1 i.e., four candidates were called to participate in the selection process for each vacancy in MMGS II posts and as the petitioners were not so called on account of their being shown lower in the 1994 provisional seniority list that the petitioners had a grievance for the first time. Soon after the first respondent had issued the notification on 24.04.2000 the petitioners had approached this Court. There has been no delay, much less inordinate, on the petitioners' part. The contention that the writ

petition is liable to be dismissed on the ground of latches must therefore be rejected.

Since the objection to the maintainability of the writ petition, both on the ground of non-joinder of parties and latches, has been negatived, it is wholly unnecessary for this Court to examine the contention of Sri B.V.S. Sivaram Prasad, learned Counsel for the petitioner, that in the absence of a specific plea being taken by the respondent bank, in its counter-affidavit, the contentions regarding non-joiner of parties and latches does not necessitate adjudication.

Now the question, as to whether the date of the order of appointment i.e., 16.02.1991 should be the date from which the petitioners' seniority in the cadre of JMS Grade I should be reckoned or whether their date of joining on 23.02.1991 and 01.03.1991 respectively should be the relevant date, needs to be examined.

The Saraswathi Grameena Bank (Staff) Service Regulations, 1983 were made by the Board of Directors of the respondent bank, in exercise of the powers conferred under Section 30 of the Regional Rural Banks Act, 1976, after consultation with the sponsor banks i.e., State Bank of Hyderabad and the Reserve Bank of India and with the previous sanction of the Central Government. These Regulations have statutory force. Regulation 13 of these Regulations deals with seniority and, under clause 1(a) thereof, the seniority of an officer or an employee of the bank in a grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale.

In **Puri Gramya Bank**[1], the Supreme Court observed:

"……It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. **By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis**. The view, therefore, is wrong……"(emphasis supplied)

Regulation 13 (1)(a) of the Chaitanya Bank (Staff) Service Regulations, which is identical to Regulation 13(1)(a) of the Saraswathi Grameena Bank (Staff) Service Regulations, 1983, came up for consideration in **G. Koteswara Rao**[2] and the Division Bench of this Court observed:

"……**A perusal of sub-rule (1)(a) and sub-rule (2) of Rule 13 makes it abundantly clear that the seniority of an officer or employee of the Bank in any grade or scale has to be reckoned with reference to the date of his appointment in that grade or scale; where number of officers are employed by direct recruitment, their inter se-seniority in a batch to any grade or scale will have to be reckoned with reference to the ranks allotted at the time of such recruitment. Admittedly, in this case, the recruitment was made in accordance with the selection list prepared on the basis of merit. Therefore, the preparation of seniority on any basis other than the ranking in the selection list will be contrary to the Rules**……"(emphasis supplied)

The fortuitous circumstance of a candidate reporting for duty would neither alter the ranking given by the Selection Board, nor can it be made the basis for assigning seniority.

Reliance is however placed on Regulation 7 to contend that commencement of service thereunder is only from the date the person appointed in the bank reports for duty on a post in accordance with the terms and conditions of the offer of appointment. Under the proviso to Regulation 7, in the event of an

employee joining in the afternoon of the working day he shall not be entitled to draw pay and allowances for that day. Regulation 7 thus relates to commencement of service only for the purposes of fixation of pay and allowances. No employee shall be entitled for pay and allowances for a period anterior to the date on which he reports for duty in the post. In the instant case, while the order of appointment is dated 16.02.1991, since the petitioners reported for duty only on 23.02.1991, and 01.03.1991 respectively, they are entitled for pay and allowances only from the date of their joining duty and not prior thereto. That, however, does not mean that their seniority has to be reckoned only from the date of their joining duty in the said post.

The provisions of Regulation 7 are not contrary to Regulation 13. On a harmonious construction, of both regulations 7 and 13, it is clear that while Regulation 7 requires pay and allowances to be extended to an employee only from the date he joins duty, Regulation 13 provides that the seniority of an officer in a grade or scale shall be reckoned from the date of his appointment in that grade or scale. As Regulation 7 is not contrary to Regulation 13, the question of Regulation 7 prevailing over Regulation 13 does not arise. Clause 1(d) of the order of appointment dated 16.2.1991 provides that the appointment would take effect only from the date of joining at the branch to which the employee is posted, after completion of the required formalities. The provision in clause (1)(d), of the order of appointment, is referable to Regulation 7 and it is only from the date on which an employee joins duty in the branch to which he is posted, after

completion of the required formalities, would he be entitled for pay and allowances from the date on which his appointment takes effect. It cannot be lost sight of that clause (4), of the very same appointment order dated 16.2.1991, required the petitioners to present themselves on or before 1.3.1991 and provides that in case they did not report before 1.3.1991, but reported subsequently, they would lose their seniority as per the merit list communicated by the Banking Service Recruitment Board. Thus, 1.3.1991 was the prescribed cut off date before which an employee was entitled to join duty to ensure that his seniority, as per the merit list communicated by the Banking Service Recruitment Board, was protected. Regulation 2(d)(ii) defines "duty" to mean the period during which an officer or employee is on joining time. Clause (4) of the order of appointment dated 16.02.1991 gave them joining time till 01.03.1991 and as a result, in case the selected candidate reported for duty on or before 01.03.1991 he must be deemed to be on duty in accordance with Regulation 2(d)(ii). It is not in dispute that both the petitioners herein, in accordance with Clause (4) of the order of appointment dated 16.2.1991, had reported for duty on or before the cut off date of 1.3.1991. Clause (4) of the appointment order dated 16.2.1991 is referable to Regulation 13 read with 2(d)(ii) of the Staff Service Regulations. On a conjoint reading of Clause (4) of the appointment order dated 16.2.1991 and Regulation 13(1) & 2(d)(ii) of the Saraswathi Grameena Bank (Staff) Service Regulations, it is clear that the seniority of the petitioners was required to be reckoned with reference to the date of their appointment in JMS-I

Grade i.e., 16.2.1991.

It must also be noted that, while the petitioners were selected by direct recruitment, for appointment as officers JMS-I grade, by the Banking Service Recruitment Board, they were allotted to the 1st respondent bank wherein they were working as clerks-cum-cashiers earlier. It is the specific case of the petitioners herein, which fact has not been denied by the respondents, that due to pressure of work they were not relieved by the respective branches of the 1st respondent – bank in which they were working as clerks cum cashiers, that while the 1st petitioner was relieved on 22.2.1991 he joined as officer in JMS-I grade on the very next day on 23.2.1991 and similarly the 2nd petitioner, having been relieved on 28.2.1991, had joined duty on 1.3.1991. Having failed to relieve the petitioners, who were working with them as clerks cum cashiers, to enable them to join duty as officers JMS-I grade, it is not open to the respondent bank to contend that their inability to join earlier was on their own volition and that, in terms of the order of appointment dated 16.2.1991, their seniority would be reckoned only from the date on which they joined duty. As clause (4) of the order of appointment dated 16.2.1991 read with Regulation 13 & 2(d)(ii) of the Staff Service Regulations requires the petitioners' seniority to reckoned from the date of their appointment i.e., 16.2.1991, the mere fact that they accepted the terms and conditions in the offer of appointment cannot be construed as their having waived their right to claim seniority from the date of their appointment, when there is nothing in the order of appointment which disentitles them from

claiming seniority with effect from the date of their appointment i.e., 16.2.1991. Both the petitioners herein are entitled to have their seniority, in JMS-I grade, reckoned from the date of their appointment i.e, 16.2.1991 and the respondent bank shall accordingly extend to them the benefit of seniority from 16.2.1991.

While Sri B.V.S. Sivaram Prasad, learned counsel for the petitioner, would contend that, on their seniority being reckoned from 16.2.1991, the petitioners would fall within the zone of consideration for appointment as Officers Middle Management Grade Scale–II (MMGS-II) pursuant to the circular issued by the respondent bank on 24.4.2000, it is required to be noted that, since 14 posts of officers MMGS-II were sought to be filled up pursuant to the said notification, and the zone of consideration was 4:1, 56 candidates in the order of seniority in officers JMS-I grade were required to be called for selection to fill up the 14 MMGS II posts. Whether the petitioners, on their seniority as JMS-I being reckoned from 16.2.1991, would have fallen within the zone of consideration to be called for selection, is a matter for the respondent–bank to examine. It is only if the petitioners, on their seniority being revised, fall within the zone of consideration, would they be entitled for being considered for selection to the post of officers–MMGS-II in the selections held in the year 2000. It cannot also be lost sight of that, even if the petitioners fall within the zone of consideration, it does not entitle them to automatically claim promotion to MMGS-II posts, for promotion to the said post is to be effected on the principle of seniority-cum-merit. In any

event, these are all matters for the respondent–bank to examine. In case the petitioners fall within the zone of consideration, for selection to the post of officers in MMGS-II in the year 2000, the respondent–bank shall consider their cases for promotion in accordance with the rules, regulations and the relevant instructions/orders. The entire exercise in this regard shall be completed within a period of four months from the date of receipt of a copy of this order. Since the petitioners' claim is that they are entitled for consideration to the post of MMGS II in the year 2000, the mere fact that the 1st petitioner was subsequently promoted, as officer MMGS–II, is of no consequence.

The writ petition is accordingly allowed. However, in the circumstances, without costs.

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Date: .01.2007 RAMESH RANGANATHAN, J

ASP/MRKR

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[1] 1994(6) SCC 301

[2] 1998(4) ALD 437(DB)

[3] 1983(2) SLR 113

[4] AIR 2003 SC 1831